

**FILED**

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DISCIPLINARY COMMISSION OF THE  
SUPREME COURT OF ARIZONA  
BY *[Signature]*

**BEFORE THE DISCIPLINARY COMMISSION  
OF THE SUPREME COURT OF ARIZONA**

IN THE MATTER OF A MEMBER ) Nos. 05-0748, 05-0857  
OF THE STATE BAR OF ARIZONA, )  
)  
**CHRISTOPHER J. PIEKARSKI,** )  
**Bar No. 019251** )  
) **DISCIPLINARY COMMISSION**  
RESPONDENT. ) **REPORT**  
)

This matter came before the Disciplinary Commission of the Supreme Court of Arizona on September 9, 2006, pursuant to Rule 58, Ariz. R. Sup. Ct., for consideration of the Amended Hearing Officer's Report filed May 18, 2006, recommending censure one year of probation with the State Bar's Member Assistance Program (MAP),<sup>1</sup> and costs. The State Bar filed an objection and requested oral argument. Respondent and counsel for the State Bar were present.

The State Bar argues that the Hearing Officer's recommendation of censure and probation is not appropriate. The State Bar asserts that a 120-day suspension is an appropriate sanction based on Arizona case law. The State Bar further asserts that the Hearing Officer erred in relying upon statements made by Respondent that were not in evidence, erred in not finding that aggravating factor 9.22(d) multiple offenses was present, and erred in finding that mitigating factor 9.32(b) was present.

Respondent argues that censure is an appropriate sanction. Respondent admits that he engaged in the unauthorized practice of law, but argues his actions were committed

<sup>1</sup> The Hearing Officer inadvertently recommended MAP instead of the Law Office Management Assistance Program (LOMAP).

negligently and not knowingly or intentionally. Respondent asserts that the Entry of Default does not preclude him from arguing his mental state. Respondent further asserts that his failure to participate in the disciplinary proceedings was based on his misguided belief that admitting to the charges and not contesting them would expedite the process. Respondent requests the matter be remanded for a mitigation hearing.

### **Decision**

The eight members<sup>2</sup> of the Disciplinary Commission by a majority of seven,<sup>3</sup> recommend accepting and adopting the majority of the Hearing Officer's findings of fact and conclusions of law, but modifying *de novo* the recommended sanction to reflect a 30-day suspension, two years of probation, effective upon the signing of the probation contract with the State Bar's Law Office Management Assistance Program (LOMAP) including a practice monitor, and costs of these disciplinary proceedings.<sup>4</sup>

### **Terms of Probation**

1. Respondent shall contact the director of LOMAP to schedule an assessment as to the effectiveness of Respondent's mail and correspondence handling in his office.
2. Respondent shall comply with any changes suggested by LOMP, and permit LOMAP personnel access to his office and staff to confirm that any recommended changes have been accomplished and remain in effect.
3. Respondent shall obtain a qualified practice monitor approved by bar counsel.
4. Respondent shall pay the costs incurred in these proceedings.

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<sup>2</sup> One public member seat remains vacant.

<sup>3</sup> Commissioner Flores was opposed having determined that a remand was appropriate.

<sup>4</sup> The Hearing Officer's Report is attached as Exhibit A.

1           5.     In the event Applicant fails to comply with any of the foregoing terms of  
2 probation and information thereof is received by the State Bar, Bar Counsel shall file with  
3 the Hearing Officer a Notice of Non-Compliance. The Hearing Officer shall conduct the  
4 hearing within thirty (30) days following the receipt of such Notice, to determine whether  
5 there has been non-compliance with the terms of probation and if so, to recommend  
6 appropriate action and response. If there is an allegation the Applicant failed to comply with  
7 any of the foregoing terms, the burden of proof shall be on the State Bar to prove non-  
8 compliance by clear and convincing evidence.

9                               **Discussion of Decision**

10           Upon review, the Disciplinary Commission determined that the Hearing Officer's  
11 findings of fact as stated and deemed admitted by default, support a knowing mental state.  
12 The Commission determined that suspension is the presumptive sanction for Respondent's  
13 particular misconduct involving the unauthorized practice of law while summarily  
14 suspended for failure to comply with Rule 45, Mandatory Continuing Legal Education  
15 requirements. *See* Hearing Officer's Report, p. 2, finding #6.

16           The Commission further determined that the Hearing Officer erroneously considered  
17 Respondent's evidence in mitigation and, based on the evidence submitted in Respondent's  
18 Memorandum in Support of Mitigation of Sanctions filed March 28, 2006, erroneously  
19 concluded that Respondent's mental state was negligent, and that mitigating factor 9.32(b),  
20 absence of selfish or dishonest motive is present.

21           The finding that Respondent acted dishonestly is deemed admitted by default. The  
22 Hearing Officer erred by finding in mitigation facts that were contrary to the ones alleged in  
23 the Complaint and therefore, inconsistent with the facts deemed admitted by default.  
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Respondent did not participate in the disciplinary proceedings. A default was entered and thereafter, Respondent did not request an aggravation/mitigation hearing. Respondent waived his right to present evidence in mitigation. Moreover, the State Bar did not have an opportunity to cross-examine Respondent on the evidence and unsworn testimony he submitted in mitigation.

The Commission recognizes that the facts found by default establish that on the day that the court notified Respondent that he was suspended and could not practice, Respondent was able to cure his suspension and be reinstated. Based on the fact that Respondent was capable of being reinstated at any time; and did so as soon as he became aware of the suspension, the Commission finds that a 30 -day suspension is appropriate.

### **Conclusion**

The purposes of discipline are to protect the public and deter similar conduct by other lawyers, *Matter of Kersting*, 151 Ariz. 171, 726 P.2d 587 (1986); instill public confidence in the bar's integrity, *Matter of Horwitz*, 180 Ariz. 20, 29, 881 P.2d 352, 362 (1994); and maintain the integrity of the legal system, *In re Fioramonti*, 176 Ariz. 182, 187, 859 P.2d 1315, 1320 (1993).

Therefore, based upon the findings of fact deemed admitted by default, conclusions of law, application of the ABA *STANDARDS*, including mitigating factors, and a proportionality analysis, the Commission recommends a 30-day suspension, two years

of probation (LOMAP), and costs.

1 RESPECTFULLY SUBMITTED this 21<sup>st</sup> day of November, 2006.

2  
3 *Barbara A. Atwood*

4  
5 Barbara A. Atwood, Chair  
Disciplinary Commission

6 Original filed with the Disciplinary Clerk  
7 this 21<sup>st</sup> day of November, 2006.

8  
9 Copy of the foregoing mailed  
this 21<sup>st</sup> day of November, 2006, to:

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